

Fair Justice Task Force

Subcommittee on Mental Health and the Criminal Justice System

Thursday, January 18, 2018
Conference Room 329/330
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Kent Batty, Chair, Susan Alameda, Mary Lou Brncik, Chris Driscoll (proxy for Nancy Rodriguez), Jim Dunn, Josephine Jones, Kathleen Mayer, Dr. Dawn Noggle, Dr. Carol Olson, Judge Susan Shetter, Commissioner Barbara Spencer, Lisa Surhio, Sabrina Taylor, Paul Thomas, Juli Warzynski

Appearing Telephonically: Dr. Tommy Begay, Judge Christopher Staring, Vicki Hill

Absent/Excused: Detective Kelsey Commisso, India Davis, Judge Joe Mikitish, Dr. Michael Schafer, Mary Ellen Sheppard, Danna Whiting

Administrative Office of the Courts (AOC) Staff: Jennifer Greene, Jodi Jerich, Amy Love, Francy Luna Diaz, Sabrina Nash, Angela Pennington, Summer Stevens

Guest Speakers: Ms. Jennifer Carusetta, Health Systems Alliance of Arizona, Judge Jim McDougall (ret.), Frazer, Ryan, Goldberg & Arnold, Dr. Michael Sutter, Community Bridges, Dr. Don Fowls, Mercy Maricopa Integrated Care

Welcome, opening remarks, and approval of minutes

The January 18, 2018 meeting of the Fair Justice Task Force Subcommittee on Mental Health and the Criminal Justice System was called to order at 10:25 a.m. by Kent Batty, chairman. The Chairman thanked the members for their attendance and asked each one to introduce themselves.

The draft minutes of the December 12, 2017 meeting were presented for approval. A motion was made to amend the minutes to reflect Flagstaff Police Department's Sergeant Cory Runge's correct rank.

Motion: To approve the October 24, 2017, meeting minutes, as amended. **Action:** Approve. **Moved by:** Judge Shetter. **Seconded by:** Jim Dunn. Motion passed unanimously.

Recommendation regarding best practices relating locations for Rule 11 evaluations

At previous meetings, members discussed how courts can make it easier for defendants to keep their appointments for court-ordered competency evaluations. Ultimately the subcommittee agreed with the recommendation from Mr. Thomas that centralizing evaluations, preferably in the courthouse, was the best approach. Consistent with that view, the members reviewed a proposal to recommend centralization of evaluations as a best practice.

After some discussion, the following language was moved and approved:

“It is the recommendation of the Subcommittee on Mental Health and the Criminal Justice System that it be a best practice that Rule 11 mental health evaluations and restoration to competency services be offered at locations as convenient as possible for the defendant with attention to the accessibility of those locations to public transportation.”

Motion: To approve the motion as stated above. **Action:** Approve. **Moved by:** Dr. Noggle. **Seconded by:** Jim Dunn. Motion passed unanimously.

Update of Rule petition filing

Ms. Jennifer Greene, AOC Staff Attorney reported that the Dave Byers, as Chairman of the Fair Justice Task Force, filed a petition to amend Rules 11.5 and 11.6 of the Arizona Rules of Criminal Procedure. This rule petition proposes changes recommended by the Subcommittee. Ms. Greene noted that the Court will consider the Petition at its late summer agenda and that the petition is open for public comments until May 21.

Presentation on draft legislation to amend statutes related to civil commitment screening and evaluation processes

The Chair invited Jennifer Carusetta, Executive Director of the Health Systems Alliance of Arizona, Dr. Don Fowls, Chief Medical Officer for Mercy Maricopa Integrated Care, Dr. Michel Sucher, Chief Medical Officer of Community Bridges, and Judge James McDougall (ret.), of Frazer, Ryan, Goldberg and Arnold to address the Subcommittee. These representatives have formed a workgroup to identify statutory changes to the civil commitment process to improve services to those with mental health problems and their families. The workgroup is made up of Maricopa County healthcare providers including hospitals, the Regional Behavioral Health Agency (RBHA), and screening agencies such as Community Bridges.

The guests spoke about their work to change the screening and evaluation processes for persons

who may need court-ordered mental health services. Ms. Carusetta stated that it is their goal to make the involuntary commitment process more understandable for patients and their family members while also making the process more efficient and accountable. Dr. Fowls and Dr. Sucher have attended numerous meetings with healthcare personnel to identify how hospitals, screening agencies, and evaluation agencies can work more efficiently and prevent unnecessary delays for person who require mental health screenings and evaluations. They noted that the availability of mental health care resources varies throughout the state. Changes to processes may work for facilities in Maricopa County, but may not be practical for those in other jurisdictions. Accordingly, their group is seeking input from a broad cross-section of stakeholders, particularly those outside Maricopa County, having already met with officials in Pima County.

Next, Judge McDougall discussed the provisions of a bill draft. The proposal eliminates the distinction between emergency and non-emergency petitions for screening by creating a single form. A screening agency must act upon a petition within specified time frames. A screening agency may issue a “Certificate of Hold” that allows it to hold a person for observation for up to 48 hours without a court order. Judge McDougall explained that the “Certificate of Hold” is modeled on a California law that permits a psychiatric facility to hold a person up to 72 hours for observation and screening.

Discussion ensued with several questions about the Certificate of Hold. The members expressed interest in staying informed of the workgroup’s progress and asked that its bill, once finalized, be brought back to the Subcommittee. The members thanked Judge McDougall, Dr. Fowls, Dr. Sucher, and Ms. Carusetta for their efforts to make the process more accountable and efficient.

Legislative Update

In response to the Subcommittee’s discussion regarding statutory changes to the mental health statutes, Amy Love, AOC Deputy Director of Government Affairs, informed the Subcommittee of proposed legislation that would amend a mental healthcare statute in Title 36. HB 2251 states that if a person is designated as seriously mentally ill (“SMI”) but also has a co-occurring substance abuse disorder, that person may not be denied mental health services for which they are eligible. Ms. Love said the sponsor of the legislation is seeking anecdotal information about persons who are designated as SMI, but who also have co-occurring substance abuse problems and who have been denied mental health care treatment.

How data collection may assist the court in identifying ways to effectively administer justice to those with mental illness.

Integrated data sharing, the use of advance health care directives, and the development a form to capture information as person moves through the justice and healthcare systems

In light of other agenda items that needed to be addressed at today's meeting, the Chair asked the members to reserve comment on these items for a future meeting.

Central repository for Rule 11 documents

On behalf of Don Jacobson, who was unable to attend the meeting, the Chair provided an update on the status of the AOC's efforts to create a central repository for Rule 11 documents. Last year, statutes and court rules were amended to allow limited jurisdiction courts (LJCs) to conduct Rule 11 hearings under specified circumstances rather than transferring these proceedings to superior court. LJCs now need an easy and reliable way to access records from past Rule 11 proceedings. Initial discussions with AOC IT personnel envision a searchable database built in Sharepoint.

Some members expressed concerns that unredacted medical records may be accessible through this new database. Additionally, members opined that it may not be necessary for a central database to provide direct access to all documents from previous Rule 11 hearings. Members suggested that a central database be limited to case history and that it need not provide direct access to documents. If a search revealed that a defendant had been the subject of a previous Rule 11 proceeding in another court, any court could contact that court and obtain the necessary records.

Judge McDougall suggested that it would be useful if the database also included information about past Title 36 orders for involuntary court-ordered treatment (COT) because it is possible that a person who has been ordered into COT might also have contact with the criminal justice system. A central repository for COT orders would allow law enforcement and the courts to know that the person has previously been ordered into treatment and should be receiving mental health care services. With this information, and if appropriate, courts could divert people in these situations from the criminal justice system to mental healthcare treatment.

Transferring cases from LJCs to Superior Court

John Bellati, Mesa City Prosecutor, addressed the Subcommittee and spoke about how Rule 11 cases previously transferred from the Mesa Municipal Court to the Superior Court in Maricopa County. Mr. Bellati said that before Mesa's participation in the Rule 11 pilot program, all of Mesa's Rule 11 cases were transferred to superior court. He said this practice resulted in several

negative consequences. First, the transfer confused the defendants because they often did not appreciate the jurisdictional differences between the city court and superior court and did not understand why their case had to be moved to a different courthouse. Second, there was a time delay when a case file was transferred to Maricopa County Superior Court. Third, transferring the case required the defendant to travel from Mesa to Phoenix. Due to the distance between Mesa and Phoenix and the reliance on public transportation by many defendants, their failure to appear rate was high. Fourth, the superior court ordered competency evaluations at medical offices far from Mesa, making it difficult for defendants to get to their court-ordered appointments. Fifth, city prosecutors had to travel to superior court for city-originated Rule 11 hearings. Prosecutors could spend an entire morning or afternoon in superior court for a single case. In summary, transferring Rule 11 cases to superior court resulted in delays, high failure to appear rates, and inefficient use of a prosecutor's time.

Mr. Bellati reported that Mesa's participation in the Rule 11 pilot project has yielded numerous benefits. Mesa court personnel worked with the prosecutor's office and the public defender to streamline the Rule 11 process. The court made space available at the courthouse where doctors could conduct competency evaluations. Mr. Bellati reported that it was efficient for doctors who could schedule several evaluations on a single day. This also was a convenience to the defendants who were familiar with the courthouse and knew how to get there. Holding evaluations at the courthouse significantly reduced the failure to appear rate. Second, the parties began stipulating to a single evaluation with the understanding that any party could ask for a second evaluation. Third, there was a commitment to expedite reports to the court. The case manager gave the report to defense counsel who redacted it and distributed it to the parties before the hearing. Mr. Bellati said getting reports well before the hearing was a tremendous change in the process. Usually, when Rule 11 hearings were conducted in superior court, he would receive the report just before the start of the hearing. The changes made by Mesa resulted in faster resolution of Rule 11 cases. Mr. Bellati concluded that allowing Mesa to conduct Rule 11 hearings yielded many benefits to the defendant and resulted in a more efficient administration of justice.

Providing information to the public about the civil commitment process

The Chair asked the members about their interest in developing a document that would provide information to a defendant's family, friends, and the public on the Title 36 civil commitment process. At past meetings, the Subcommittee heard from several individuals who had family members with mental health issues express their frustration about how difficult it was to navigate through the various court processes. After some discussion, the members agreed to form a workgroup to work with staff to develop an informational document and present it to the Subcommittee at a later date.

Discussion of the long-term vision for the work of the Subcommittee

This is a subcommittee of the Fair Justice Task Force (Task Force). The Task Force was established by Administrative Order No. 2016-16 and extended by Administrative Orders Nos. 2016-128 and 2017-120. The Task Force is set to terminate on June 30, 2018. The Task Force created this Subcommittee to address how the courts can better dispense justice to those persons who have mental health issues. Members stated that this is a complex issue that cannot be resolved in a few meetings. There are no easy solutions or quick fixes. Members opined that long term solutions are best developed thoughtfully over time.

Members discussed the development of a survey to identify their top priorities. The Chair directed staff to develop a survey and distribute it to the members.

Call to the public

No members of the public addressed the Subcommittee in response to a call to the public.

Adjournment

The Chairman announced future meeting dates of March 21, 2018 and April 10, 2018.

The meeting adjourned at approximately 1:50 p.m.